IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.582 OF 2006
WITH
SUMMARY SUIT NO. 1002 OF 2006

Dhanraj Pyarchand Jain. ... Plaintiff.

V/s.

M/s. Sachin Industries & Ord. ... Defendants.

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Mr. S.B. Pawar i/b. S.K. Legal Associates for the Plaintiff.

Mr. Bharucha i/b. S.V. Phadke for Defendants 1 and 2.

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CORAM : Dr. D.Y.CHANDRACHUD,J.
20TH MARCH 2007.

P.C. :

The Suit has been instituted on the basis that a loan of Rs.50,000/- was advanced by way of a cheque on 24th December 1996. On 25th March 2003, it has been averred that the Defendant paid interest on the loan for the period between 1st April 2002 till 31st March 2003. The balance-sheet of the Defendant for the year ending

31st March 2002 contains an acknowledgement that an unsecured loan of Rs.50,000/- was due and payable to the Plaintiff.

The defence to the Summons for Judgment is that a proprietory firm by the same name as the first Defendant was initially formed by the brother of the second Defendant and that, on 15th February 2000, a partnership came to be formed between the second and the third Defendants. Hence, it has been submitted that the liability would be that of the earstwhile proprietor and not of the partnership.

There is no merit in the defence, for the simple reason that in paragraph 22 of the reply to the Summons for Judgment filed by the first Defendant, there is no denial of the fact that in the balance-sheet of the Defendants, for the year ending 31st March 2002, the amount of Rs.50,000/- is shown as due and outstanding towards an unsecured loan, to the Plaintiff.

In the circumstances, the defence that the amount is due by the erstwhile sole proprietor and not by the Defendants cannot be accepted. However, in order to enable the Defendants to have an

opportunity to contest the suit, conditional leave is granted to the Defendants subject to the deposit of an amount of Rs.50,000/-, being the principal amount of the loan within a period of 8 weeks from today. Upon deposit, the amount shall be invested by the Prothonotary & Senior Master in a fixed deposit of a Nationalised Bank and shall be renewed periodically during the pendency of the suit. In the event, the amount is so deposited, the Defendants shall file a written statement within a period of 8 weeks from the date of deposit.